

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
KRISTOPHER PURCELL,  
Defendant.

Case No. [18-cr-00506-BLF-1](#) (VKD)

**DETENTION ORDER**

The United States moved for detention of defendant Kristopher Purcell pursuant to 18 U.S.C. §§ 3142(f)(1). The Court held a detention hearing on October 22, 2018. The United States was represented by Assistant U.S. Attorney Katherine Griffin. Mr. Purcell was present at the hearing and represented by his attorney Edward Ajlouny. Pretrial Services Officer Allen Lew was also present. For the reasons stated on the record during the hearing and as set forth below, the Court finds that there are no conditions, or combination of conditions, of release that would reasonably assure the safety of other persons and the community and the appearance of the defendant as required in this case.

**I. BACKGROUND**

As set forth in the indictment, the government charges Mr. Purcell with two counts of attempted murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(5), two counts of assault with a dangerous weapon in aid of racketeering in violation of 18 U.S.C. § 1959(a)(3), and one count of use of a firearm during and in relation to a crime of violence and possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). The government alleges that Mr. Purcell engaged in the conduct charged in the indictment in order to maintain and enhance his position within the Norteño street gang. In addition to the indictment, the government

1 filed a proffer in support of its motion for detention. Dkt. No. 5.

2 **II. LEGAL STANDARDS**

3 On a motion for pretrial detention, the government bears the burden to show by clear and  
4 convincing evidence that no condition or combination of conditions of release will reasonably  
5 assure the safety of other persons or the community. 18 U.S.C. § 3142(f)(2). Conversely, the  
6 government bears the burden to show by a preponderance of the evidence that no condition or  
7 combination of conditions of release will reasonably assure the defendant's appearance. *United*  
8 *States v. Motamedi*, 767 F.2d 1403, 1407 (9th Cir. 1985).

9 In evaluating whether pretrial release is appropriate, the Court must consider (1) the nature  
10 and circumstances of the offense charged, (2) the weight of the evidence against the defendant, (3)  
11 the defendant's history and characteristics (including his character, physical and mental condition,  
12 family ties, employment, financial resources, length of residence in the community, community  
13 ties, past conduct, history relating to drug and alcohol abuse, criminal history, and record  
14 concerning appearance at court proceedings), and (4) the nature and seriousness of the danger to  
15 any person or the community that would be posed by the defendant's release. 18 U.S.C.  
16 § 3142(g).

17 **III. DISCUSSION**

18 **A. Rebuttable Presumption**

19 As set forth in the indictment, the United States charges Mr. Purcell with two counts of  
20 attempted murder in aid of racketeering in violation of 18 U.S.C. § 1959(a)(5), two counts of  
21 assault with a dangerous weapon in aid of racketeering in violation of 18 U.S.C. § 1959(a)(3), and  
22 one count of use of a firearm during and in relation to a crime of violence and possession of a  
23 firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). Pursuant to 18  
24 U.S.C. § 3142(e)(3)(B), a rebuttable presumption that Mr. Purcell is both a danger and a flight risk  
25 arises from his alleged violation of 18 U.S.C. § 924(c).

26 **B. Nature and Circumstances of the Offense**

27 According to the indictment and the government's proffer, Mr. Purcell participated in a  
28 conspiracy to kill two victims who were shot in front of their residence. The charged offenses

1 include crimes of violence and involved the use of a firearm. Mr. Purcell faces maximum terms  
2 of imprisonment ranging from 10 years to life on the charged counts. Regardless of the merits of  
3 the allegations in the indictment, there is no question that the offenses charged are violent and  
4 serious.

5 In addition, the indictment alleges that Mr. Purcell's conduct was motivated by his  
6 participation in a gang and its criminal activities.

7 **C. Weight of the Evidence**

8 The weight of the evidence is difficult to assess at this stage of the case. However, a grand  
9 jury heard evidence of at least the offenses charged in the indictment and found probable cause  
10 supported those charges. In addition, the government proffers that the evidence supporting the  
11 charged offenses includes surveillance video, ballistic evidence, other physical evidence, and the  
12 testimony of witnesses. However, the Court observes that the weight of the evidence is the least  
13 important consideration. *Motamedi*, 767 F.2d at 1408.

14 **D. Personal Characteristics of the Defendant**

15 Mr. Purcell is only 20 years old, and while he acknowledges participation in a gang, he  
16 expressed a present desire to disassociate from any gang affiliation or activity. He has lived with  
17 his parents at the same address in Salinas for most of his life. He graduated high school and is  
18 currently unemployed. Mr. Purcell has a history of substance abuse, but expressed an interest in  
19 receiving treatment. He does not suffer from any significant mental health conditions.

20 Mr. Purcell does not have any adult criminal convictions. However criminal charges are  
21 pending against him for drug-related offenses and an assault in connection with gang-related  
22 activity. Pretrial Services indicates that Mr. Purcell has an active protection order lodged against  
23 him, but the circumstances giving rise to that order were not addressed at the hearing. The  
24 government proffers evidence that Mr. Purcell is a suspect in a murder that occurred shortly before  
25 the offenses charged in the indictment. Additionally, the government proffers that Mr. Purcell  
26 recently filmed and then posted video of beatings of a juvenile sex trafficking victim to his  
27 Instagram account. According to the government, this non-charged conduct is related to Mr.  
28 Purcell's ongoing gang-related activities. Dkt. No. 5.

1 While Mr. Purcell does not appear to have financial resources of his own, his parents own  
2 property and are willing to assist Mr. Purcell with a bond to secure his release. Mr. Purcell's  
3 mother is willing to serve as his custodian.

4 **E. Nature and Seriousness of the Danger to Others Posed by Defendant's Release**

5 In addition to the conduct charged in the indictment, the government has proffered  
6 evidence (described above) of Mr. Purcell's history of violence and participating in a gang,  
7 including recent conduct. While the Court does not give substantial weight to uncharged conduct  
8 and conduct for which Mr. Purcell has not suffered a conviction, the indictment alone gives rise to  
9 a presumption of dangerousness. Mr. Purcell's professed desire to disassociate himself from gang  
10 affiliation and gang-related activity is commendable, but this change of heart appears to have been  
11 very recent and is supported only by Mr. Purcell's statements to Pretrial Services.

12 **F. Consideration of Conditions of Release**

13 The Bail Reform Act of 1984 favors pretrial release, not detention. Accordingly, the Court  
14 has carefully considered whether there are any conditions of release that will reasonably assure the  
15 safety of others and the community and the defendant's appearance. In particular, the Court has  
16 considered whether a combination of location restrictions, monitoring, and substance abuse  
17 treatment, together with the requirement of a substantial secured bond and suitable custodian,  
18 would provide such reasonable assurance. The Court concludes they would not.

19 As noted above Mr. Purcell's parents own property and his father was willing to serve as a  
20 surety, and his mother was willing to serve as his custodian, to ensure Mr. Purcell's compliance  
21 with conditions of release. However, the Court does not give substantial weight to Mr. Purcell's  
22 professed desire to disassociate himself from gang activity, in view of the government's proffer  
23 (described above) concerning his recent violent activities and the conduct alleged in the  
24 indictment. Moreover, the government's proffer calls into question the suitability of his mother to  
25 serve as a custodian, and the ability of both of his parents to monitor and influence their son's  
26 behavior, and to ensure his compliance with the conditions of release initially recommended by  
27  
28

1 Pretrial Services. *See* Dkt. No. 5 at 8.<sup>1</sup>

2 For these reasons, the Court finds that, based on the present record, the government has  
3 carried its burden to show by a preponderance of the evidence that Mr. Purcell is a flight risk, and  
4 that no condition, or combination of conditions, of release could be imposed that would  
5 reasonably assure his appearance as required in this case. In addition, the Court finds that Mr.  
6 Purcell has not rebutted the presumption of dangerousness, and that the government has shown by  
7 clear and convincing evidence that no condition, or combination of conditions, of release could be  
8 imposed that would reasonably assure the safety of other persons or the community.

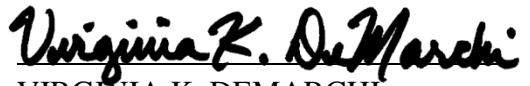
9 **IV. CONCLUSION**

10 Accordingly, defendant Kristopher Purcell is committed to the custody of the Attorney  
11 General or his designated representative for confinement in a corrections facility separate, to the  
12 extent practicable, from persons awaiting or serving sentences or being held in custody pending  
13 appeal. Mr. Purcell shall be afforded a reasonable opportunity for private consultation with  
14 defense counsel. On order of a court of the United States or on the request of an attorney for the  
15 government, the person in charge of the corrections facility shall deliver Mr. Purcell to the United  
16 States Marshal for the purpose of appearances in connection with court proceedings.

17 The Court further orders that, at the direction of Pretrial Services, Mr. Purcell shall submit  
18 to an assessment for purposes of determining whether he is eligible for participation in residential  
19 treatment for substance abuse.

20 **IT IS SO ORDERED.**

21 Dated: October 23, 2018

22  
23   
24 VIRGINIA K. DEMARCHI  
25 United States Magistrate Judge  
26  
27

28 <sup>1</sup> The Court notes that at the conclusion of the hearing, Pretrial Services withdrew its initial  
recommendations regarding appropriate conditions for release.